



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup
Professionals

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PROFESSIONAL CONDUCT COMMITTEE
Minutes of Meeting on October 16, 2008
[Approved on December 12, 2008]

Prepared by: Terry Wood

Meeting Location: Raytheon Company, Waltham, MA.

- 1. Call to Order:** Robert Luhrs called the meeting to order at 12:45 p.m. Also present were Gail Batchelder, Janine Commerford, Deborah Farnsworth, Kirk Franklin, and Kelley Race. Committee members absent: Jack Guswa, Christophe Henry, Gretchen Latowsky, Paul Mullen, and Debra Stake. Staff members present were Allan Fierce, Brian Quinlan, Lynn Read, Ron Viola, Terry Wood and Al Wyman. Also present was Wesley Stimpson of the LSP Association, and Rob Hoynes.
- 2. Announcements:** Ms. Wood asked that the agenda for the meeting be reordered, and Ms. Commerford asked that an additional item be added to the agenda.
- 3. Previous Minutes:** The draft minutes of the meeting held on September 18, 2008 were approved with minor edits.
- 4. Old Business**

A. Status of CRTS

At Mr. Luhrs' request, the chair of each CRT reported on progress made since the September meeting.

B. Screening team report re: complaint 08C-05

At last month's meeting the Committee had appointed a screening team (Mr. Henry, Ms. Batchelder and Ms. Wood) to review complaint 08C-05. The complaint was filed by a former client and alleged, among other things, that the LSP misled the client into believing his/her proposed approach to a release would be less expensive than an approach proposed by

a different LSP and would lead to site closure. Ms. Wood stated that the screening team had reviewed the LSP's proposal to the client as well as some other documents and would recommend that the complaint be accepted by the Committee for further investigation. A motion was made and seconded to accept the complaint for investigation and appoint a CRT. The motion passed unanimously. A second motion was made and passed to appoint Mr. Henry, Ms. Batchelder and Ms. Wood to the CRT. The motion passed unanimously.

C. Update re: Web Site Subcommittee

Mr. Luhrs stated that the subcommittee has not met.

D. Review one-year status report regarding Board Policy 2007-1

Discussion of the draft status report prepared by Mr. Fierce was tabled at last month's meeting. Mr. Fierce stated that the Committee had two issues to discuss in regard to the draft status report: 1) to edit the draft document; and 2) to decide whether the Committee is happy with the policy or wants to amend it in any way. Mr. Luhrs stated that the number of cases on the active case list has been reduced by roughly half since the policy went into effect and, therefore, he believes the Committee has made significant strides toward expediting the disciplinary process. He asked Mr. Stimpson how the LSP Association's (LSPA's) membership views the LSP Board's handling of the disciplinary complaint process. Mr. Stimpson stated that he could not speak for the membership but he believes that many members do not realize the amount of time it takes the LSP Board to resolve disciplinary complaints. He stated that LSP Board's disciplinary process is also not a burning issue for the LSPA Board members but that, if asked, they would likely attribute the recent reduction in the number of active cases to the LSP Board's willingness to negotiate with LSPs early in the complaint investigation process. He added that the LSPA Board would prefer that the LSP Board be willing to negotiate over a wider range of potential disciplines in specific cases as opposed to only being willing to negotiate over a range of months for a suspension which appears most often to be the negotiated settlement. Mr. Simpson stated that, in his personal opinion, there are still several older cases in process and newer cases do not seem to be moving that quickly.

Mr. Luhrs asked members of the LSP Board staff whether they believed the delays in disciplinary investigations were more generally due to lack of staff time or lack of Board member time. Ms. Wood stated that she believes it is a mix – on some occasions no staff attorneys have been available to start new cases and other times it has been that Board members on CRTs have not had time to meet.

Mr. Luhrs asked whether the Committee members wanted to review the draft report line-by-line. The consensus of the Committee was to accept the draft as written and to also ask Mr. Fierce to prepare another status report one year from now. The consensus of the Committee was to keep Policy 2007-1 in place.

5. New Business

A. How long should press releases remain on the Web site?

Ms. Wood stated that the Board staff had recently noted that the Board's Web site includes press releases dating back to August 2004. She stated that the staff recalled that the Committee may have discussed a policy regarding how long press releases should remain posted, but when she looked back at past Committee meeting minutes, she discovered that the Committee had briefly discussed the issue in June 2005 but had referred it to the Web site subcommittee to come up with a recommendation. The Web site subcommittee has not met since that time so no policy on this issue exists. She stated that, in addition to a copy of the relevant portion of the June 2005 meeting minutes, she was also handing out copies of the home and news pages from the Web site so Committee members could see how the list of press releases appears there.

Some Committee members stated that they supported leaving all of the press releases posted on the Web site indefinitely because this list is a good way for the public to see the number of cases the Board has completed, and, in any event, the disciplinary information about each LSP remains available on that individual LSP's disciplinary history page on the site. Some Committee members expressed the possibility that a press release might show up if someone were to do a Google search on a particular LSP's name. These members asked whether the Committee should be concerned about any potential impact upon those LSPs.

After discussion, a motion was made and seconded not to change the current posting of press releases on the Web site. The motion passed unanimously.

B. Should LSP firm names be included in press releases?

Mr. Fierce stated that a former LSP who had been disciplined by the LSP Board in the past had called him to ask why the press release issued in a recent disciplinary case did not name the LSP's firm even though the LSP was a principal when the press release in his own case did name his firm. Ms. Wood stated that generally speaking press releases do not mention firm names. Mr. Fierce asked the Committee to consider if there might be instances when the Committee would want firm names included in press releases regarding disciplinary cases. After discussion, a motion was made and seconded not to name an LSP's firm in any press release unless the LSP Board voted in any particular instance to do so. The motion passed unanimously.

C. Discussion regarding how the Board interprets private censure

Ms. Commerford stated that the LSP Board has not used the private censure form of discipline for a long time for a number of reasons with the exception of one recent case. She stated that one goal in disciplining LSPs is to inform the public about LSP practice, but the LSP Board has interpreted private censure to mean that the entire disciplinary file in the case becomes private. She stated that she finds this interpretation odd in light of the fact that when a disciplinary complaint is dismissed the entire file becomes public as it does if any other discipline, other than private censure, is imposed against an LSP.

Mr. Fierce stated that the Board's interpretation of the public records law has been that private censures are an exception to it and the Board has decided that the exception applies to all documents in the disciplinary file for that case. He stated that Ms. Commerford is raising the question whether this interpretation is broader than necessary. He proposed that the Committee could decide that the content of the case file be public up until the imposition of the private censure. He also stated that any new rules regarding private censures should apply to future cases and not any past ones.

Ms. Wood stated that, if the Committee were to decide that the content of the case file be public up until the imposition of the private censure, nearly the complete file would be public including the documents that set out the facts in the case that gave rise to the sanction because those documents would have been reviewed by the Board members before they decided to impose the private censure.

After some discussion, a motion was made and seconded to ask Ms. Wood to review the legal issues regarding treatment of the file in cases where a private censure is imposed and draft a policy for the Committee's review next meeting. The motion passed unanimously. The Committee also asked Ms. Wood to prepare a document comparing and contrasting the implications of a dismissal, a private censure and a public censure.

6. Future Meetings

The Committee is scheduled to meet on November 18, 2008 at a location to be determined. The Committee is also scheduled to meet on either December 16 or 18, 2008 at a location to be determined.

7. Adjournment: The meeting was adjourned at 2:42 p.m.